

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BLUEFIELD DIVISION

LOUD RECORDS, LLC, et al.,

Plaintiffs,

v.

Civil Action No. 1:05-0171

REGINALD LAMBRIGHT,

Defendant.

MEMORANDUM OPINION

Pending before the court is plaintiffs' application for entry of default judgment by the court (Doc. No. 13). This case is an action for copyright infringement arising from defendant's alleged unauthorized copying and distribution of plaintiffs' copyrighted sound recordings. For the reasons outlined below, in an accompanying Judgment Order, plaintiffs' motion for default judgment is granted in part and denied in part.

Plaintiffs are awarded judgment in the amount of \$5,250.00, in the form of statutory damages under the Copyright Act calculated at a rate of \$750.00 per song. Additionally, for the reasons outlined below, plaintiffs' request for an injunction prohibiting defendant from further infringing plaintiffs' copyrighted sound recordings through use of any online media distribution system is granted, albeit in a somewhat modified form. Plaintiffs' request for an award of costs is denied because plaintiffs have not provided the court with adequate

evidence from which to determine whether their request is appropriate.

A. Factual Background

This is an action for copyright infringement arising from defendant's alleged unauthorized copying and distribution of plaintiffs' copyrighted sound recordings. Plaintiffs filed this complaint on February 28, 2005. In the complaint, plaintiffs, major recording companies who own copyrights in sound recordings, allege that defendant, without their permission or consent, has used an online media distribution system to download copyrighted recordings and to make the recordings available to others. Specifically, the copyrighted recordings allegedly downloaded and distributed or made available include seven (7) recordings listed in Exhibit A to the Complaint. (See Doc. No. 1 Ex. A.)

Plaintiffs seek the following relief provided by the Copyright Act, 17 U.S.C. § 501:

(1) Statutory damages in the amount of \$750.00 for each of the seven copyrighted sound recordings defendant infringed, for a total award of \$5,250.00;

(2) An injunction prohibiting defendant from further infringing plaintiffs' copyrighted sound recording through use of any online media distribution system; and

(3) An award of costs in the amount of \$363.40.

After defendant was served with a complaint and failed to respond, the Clerk entered default on defendant on July 12, 2005. Plaintiffs now move for default judgment.

B. Applicable Law

As service was validly effected on defendant under Federal Rule of Civil Procedure 4, and defendant chose not to plead or otherwise defend herself in this action, all of the averments in the complaint are deemed admitted. See Fed. R. Civ. P. 8(d); Ryan v. Homecomings Fin. Network, 253 F.3d 778, 780 (4th Cir. 2001) (stating that "the defendant, by his default, admits the plaintiff's well-pleaded allegations of fact"); Branch Banking & Trust Co. v. Fowler, 2005 U.S. Dist. LEXIS 3799, at *6 (W.D. Va. Mar. 3, 2005).

However, Federal Rule of Civil Procedure 54(c) provides some limitation to the discretion of courts entering default judgment. "[A] judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment." Damages may not generally be awarded without a hearing or a demonstration by detailed affidavits establishing the necessary facts. See United Artists Corp. v. Freeman, 605 F.2d 854, 857 (5th Cir. 1979). However, courts may award damages in situations where they may be determined with certainty by reference to the pleadings and supporting documentation. See James v. Frame, 6 F.3d 307, 310 (5th Cir. 1993).

C. Analysis

1. Statutory Damages

Plaintiffs first seek the minimum statutory damages of \$750.00 per infringed work, as authorized under 17 U.S.C. § 504(c)(1), for each of the ten sound recordings listed in Exhibit A to the Complaint. An infringer of a copyright is liable for either the copyright owner's actual damages and any additional profits or statutory damages. See 17 U.S.C. § 504(a). "The copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work . . . in a sum of not less than \$750 or more than \$30,000 as the court considers just." 17 U.S.C. § 504(c)(1).

The trial court must award damages according to the number of separate and independent works infringed. See Broadcast Music, Inc. v. Xanthas, Inc., 855 F.2d 233, 237 (5th Cir. 1988). However, the damages to be assessed are within the broad discretion of the trial court as outlined in the statute. See Motown Record Co. v. Armendariz, 2005 U.S. Dist LEXIS, at **2-3 (W.D. Tex. Sept. 22, 2005).

It is not necessary for the court to hold a hearing so long as it ensures that there is a basis for damages specified in a default judgment. Here, the court finds that plaintiffs have

established an adequate basis for the requested statutory damages based on the allegations contained in the complaint that defendant has admitted by virtue of her default. Plaintiffs request the statutory minimum for willful infringement, \$750.00 per infringed work, for each of the seven works defendant infringed. Plaintiffs are awarded \$750.00 per infringement, for a total statutory damages award of \$5250.00.

2. Injunctive Relief

Plaintiffs' next request is for injunctive relief prohibiting defendant from using any online distribution system to illegally reproduce or distribute plaintiffs' copyrighted works absent a lawful license or with the express authority of plaintiffs. (See Doc. No. 1 at 5.) Additionally, plaintiffs seek injunctive relief causing defendant to destroy all copies of plaintiffs' recordings that defendant has downloaded onto a hard drive or server without plaintiffs' authorization, or stored on a physical medium or device. (Id.)

In their complaint, plaintiffs allege that defendant's conduct has caused, and, unless enjoined and restrained, will continue to cause plaintiffs great and irreparable injury that cannot be fully compensated or measured in money. (Id. at 4.) Further, plaintiffs allege that they have no adequate remedy at law. (Id.)

Section 502 of the Copyright Act authorizes the district court to grant final injunctions to prevent or restrain infringement of a copyright. See Alcatel USA v. DGI Techs., 166 F.3d 772, 790 (5th Cir. 1999). Likewise, section 503 provides that the court may impound and destroy any articles used to make the infringing copies of a copyrighted material. Id.

Section 503(a) of the Copyright Act states: "Any court having jurisdiction of a civil action arising under this title may . . . grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright." See 17 U.S.C. § 502. A copyright owner is entitled to an injunction prohibiting further infringing performances if the owner shows: (1) actual success on the merits, (2) no adequate remedy at law, (3) the threatened injury outweighs any damage to the defendant, and (4) the injunction will not disserve the public interest. See, e.g., DSC Commc'ns Corp. v. DGI Tech, Inc., 81 F.3d 597, 600 (5th Cir. 1996). In short, an injunction is appropriate if liability has been established and if there is a substantial likelihood of further infringement of plaintiffs' copyrights. See Fermata Int'l Melodies, Inc. v. Champions Golf Club Inc., 712 F. Supp. 1257, 1262 (S.D. Tex. 1989), aff'd, 915 F.2d 1567 (5th Cir. 1990).

The finding of default against defendant satisfies the element of success on the merits. Arista Records, Inc. v. Beker

Enter. Inc., 298 F. Supp. 2d 1310, 1314 (S.D. Fla. 2003).

Further, there is no adequate remedy at law because plaintiffs' injury cannot be fully compensated or measured in money. Id. Further, absent an injunction, plaintiffs would remain vulnerable to future incursions by defendant as, by default, defendant has already admitted to willfully and repeatedly infringing plaintiffs' copyrights. Injunctions are also routinely issued as part of default judgment in copyright cases. See Atari, Inc. v. N. Am. Philips Consumer Elec. Corp., 672 F.2d 607, 620 (7th Cir.), cert. denied, 459 U.S. 880 (1982).

As such, plaintiffs' request for injunctive relief is hereby granted as to the materials for which the plaintiffs have valid copyrights. An injunction, phrased as follows, is hereby issued:

Defendant shall be and hereby is enjoined from directly or indirectly infringing plaintiffs' rights under federal or state law in any copyrighted recording, whether now in existence or later created, that is owned or controlled by plaintiffs (or any parent, subsidiary, or affiliate record label of plaintiffs), including without limitation by using the Internet or any online media distribution system to reproduce (*i.e.*, download) copyrighted recordings, to distribute (*i.e.*, upload) copyrighted recordings, or to make any copyrighted recordings available for distribution to the public, except pursuant to a lawful license or with the express authority of Plaintiffs. Defendant also shall destroy all copies of any copyrighted recordings that defendant has downloaded onto any computer hard drive or server without plaintiffs' authorization and shall destroy all copies of those downloaded

recordings transferred onto any physical medium or device in defendant's possession, custody or control.*

3. Costs

Plaintiffs third request is for defendant to pay their costs of suit in the amount of \$363.40. (See Lyons Aff. ¶ 6.) Section 505 of the Copyright Act provides that "the court in its discretion may allow the recovery of full costs by or against any party" See 17 U.S.C. § 505.

However, plaintiffs submit no proof detailing the costs incurred. Accordingly, the court cannot determine whether the \$363.40 represents reasonable and allowable costs pursuant to 28 U.S.C. § 1920 (enumerating expenses that a federal court may tax as a cost). See, e.g., Hensley v. Eckerhart, 461 U.S. 424, 433 (1983) (holding that courts must ascertain what amount of fees are "reasonable" before awarding attorneys fees); Alameda Films SA de CV v. Authors Rights Restoration Corp., 331 F.3d 472, 484-

* This injunction is modified from that requested by plaintiffs as their requested injunction appears to be broader than would be supported by the allegations contained in the complaint. Plaintiffs' proposed injunction potentially extends to non-copyrighted works. The court cannot issue any injunction that is broader than the allegations in the complaint. See Cromer v. Kraft Foods North Am., Inc., 390 F.3d 812, 817 (4th Cir. 2004); Whitehead v. Viacom, 233 F. Supp. 2d 715, 726 (D. Md. 2002) (stating that a judge must ensure that an injunction is narrowly tailored to fit the specific circumstance at issue). Even given the posture of this case, the court does not believe it warranted to grant any injunction broader than the one provided in this Memorandum Opinion and Order.

85 (5th Cir. 2003) (overturning a district court's award of attorneys fees and costs because the party seeking the award did not submit documentation of the full costs and reasonable fees, but rather relied on testimony of a man who had reviewed the files of the attorneys that represented the party seeking the award). Because the court has no means of determining whether plaintiffs' averred fees are reasonable, plaintiffs' request for costs in this action is hereby denied without prejudice.

D. Conclusion

The Clerk is directed to send a copy of this Memorandum Opinion to all counsel of record and to any unrepresented party.

It is SO ORDERED this 30th day of March, 2006.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge